

TREASURY – TAXATION

DIVISION OF TAXATION

Public Utility Tax – Water and Sewerage

Proposed Readoption with Amendments: N.J.A.C. 18:22

Authorized By: Robert K. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:30A-30 and N.J.S.A. 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2004

Submit comments by **April 17, 2004** to:

Nicholas Catalano
Chief, Regulatory Services Branch
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 18:22 expires on February 19, 2004. The Division of Taxation has reviewed these rules and determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The most recent reproposal and readoption appear respectively at 31 N.J.R. 118(a), January 19, 1999, and 31 N.J.R., 777(d), March 15, 1999.

That prior readoption updated the rules as a result of 1997 statutory amendments that made electric and gas utilities no longer subject to the public utility taxes restated in Chapter 22. The prior readoption included new addresses that reflected the creation of the Division of Revenue under Reorganization Plan No. 001-1997, 29 N.J.R. 399, February 3, 1997, as amended by Executive Order No. 66 (1997), 29 N.J.R. 963, April 7, 1997 and Reorganization Plan No. 002-1998, 30 N.J.R. 1347, April 20, 1998.

The present proposal completes additional revisions necessitated by statutory amendments and repeals and updates current addresses. The proposal also makes several deletions of superfluous wording. Also, a new rule on accounting methods is proposed.

The readopted rules contain the following provisions:

Subchapter 1 contains definitions of terms used in the rules.

Subchapters 2 through 6 are reserved.

Subchapter 7 deals with the purpose of the act and imposes the public utility taxes on water and sewer companies.

Subchapter 8 deals with returns, specifically the information required on returns and the due dates, certification of returns, audit and verification of returns, provisions for failure to make returns, and additional statements regarding property acquired from other taxpayers.

Subchapter 9 specifies which corporations are subject to tax, the rates of the excise tax, the computation of tax, certification of taxes, the due date for payment, to whom the payment shall be mailed, and the method of administration, collection and enforcement of the tax.

Subchapter 10 contains provisions regarding the computation of additional excise taxes.

Subchapter 11 contains a provision on the Division certifying the amount of the excise taxes to the Treasurer.

Subchapter 12 deals with payment and collection of taxes.

Subchapter 13 concerns taxes from the water and sewer companies being deposited in the Energy Tax Receipts Property Tax Relief Fund.

Specific amendments have been made as follows:

At N.J.A.C. 18:22-1.3, Definitions, the definitions of “apportionment value”, “apportionment valuation”, “class”, “residential class category”, “cogenerator”, “corresponding therms of gas”, “corresponding kilowatts of electricity”, and “scheduled property” have been deleted, since the statutory provisions and rules that used those terms have been repealed. Also, the definitions of “gross receipts”, “real estate” and “service connections” have been updated to correlate with statutory changes under which only water and sewer businesses are subject to the Chapter 22 taxes.

N.J.A.C. 18:22-1.4, on persons subject to tax, has been repealed because it was a restatement of a statutory provision that was repealed.

N.J.A.C. 18:22-1.5, on accounting methods, has been added. The proposed rule is based on the policy of following federal accounting methods, a policy that has remained intact since before the original rule on accounting methods was adopted in 1985. The new rule merely states a common sense policy that the Division and taxpayers have followed historically.

N.J.A.C. 18:22-8.1, 8.5, 9.2, 9.6 and 9.7 have been updated to make the rules consistent with statutory provisions concerning information and payments required from taxpayers (including certain statutory requirements for paying electronically) and to update postal addresses for obtaining and mailing forms and payments.

Similarly, N.J.A.C. 18:22-10.1 has been revised to make the rules consistent with statutory provisions concerning advance payments of the Subchapter 10 public utility taxes.

N.J.A.C. 18:22-12.2 has been updated due to statutory provisions that apply the State Uniform Tax Procedure Law to the public utility taxes and that repealed some tax administration provisions.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Public utilities have been taxed since 1884. The nature of their business affects every member of the public who uses the services and products of the public utility. The public utility taxes on water and sewer companies are uniform taxes administered by the State and shared with local government jurisdictions.

It is anticipated that the utilities and the public will react positively to these rules because they merely restate, in a more simple and clear format, the statutory provisions on the concerned taxes. If the rules were not readopted, the public and taxpayers would be forced to find the pertinent tax laws in various statutes instead of finding them concisely in the administrative code.

Economic Impact

The proposed amendments bring the rules into conformity with legislative changes to the statutes, and therefore should have no significant economic impact beyond that resulting from the underlying statutory changes.

The readoption of the public utility tax rules will assist in continued accurate filing of the tax reports and payment of the applicable taxes. The rules are intended to facilitate taxpayer compliance with the statutory requirements and, hence, to lower the resources necessary to be expended to comply with the statutes.

Federal Standards Statement

A federal standards analysis is not required because the State taxation of water and sewerage companies is not a matter of Federal regulatory standards.

Jobs Impact

The rules proposed for readoption will not result in the creation or loss of jobs, and the ministerial updating of certain rules is not expected to have any affect on jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments are not expected to have an impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses, other than such requirements as are specifically mandated by statute. The proposed rules merely restate the statutory provisions taxing water and sewer companies. The reporting, recordkeeping, and other compliance requirements in the Act, N.J.S.A. 54:30A-49 et seq., apply uniformly. Any action to exempt “small business” taxpayers would be contrary to the applicable statutes. The services of an accountant or other professional may be used by a public utility, but are not required by the rules.

Smart Growth Impact Statement

The proposed rules only restate the statutory provisions imposing public utility taxes on water and sewer companies. The proposed rules will not directly impact growth. If the public utility taxes on water and sewer companies have any indirect impact on growth, it is an indirect result from the statutes imposing the taxes and not a result from the proposed rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:22.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 18:22-1.1 to 1.2, 1.4, 12.3 and 12.4.

Full text of the proposed amendments and new rule follow (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 22. PUBLIC UTILITY TAX--WATER AND SEWERAGE

SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

18:22-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

["Apportionment value" or "apportionment valuation" means the result obtained by multiplying the quantities of each class or type of scheduled property of a taxpayer by the applicable unit value, and the addition of results.]

["Class" means any segment, grouping or other division of an electric company's or gas company's customers which is established for the purpose of charging rates for electric or gas service. Any such class shall be designated to be in the residential class category or nonresidential class category. The Board of Regulatory Commissioners may permit gas and electric light, heat and power corporations to establish new tariffs, contracts or schedules as necessary. Whenever a corporation shall establish in its tariffs, contracts or schedules a new class, the Board of Regulatory Commissioners shall designate it in the residential class category or nonresidential class category.

1. With respect to electric companies, "residential class category" means any class established by an electric company which generally includes customers taking electric service under rate schedules that are primarily residential in nature; and "nonresidential class category" means any class established by an electric company which generally includes customers taking electric service under rate schedules that are primarily nonresidential in nature.

2. With respect to gas companies, "residential class category" means any class established by a gas company which generally includes customers taking natural gas service under rate schedules that are primarily residential in nature; and "nonresidential class category" means any class established by a gas company which generally includes customers taking gas service under rate schedules that are primarily nonresidential in nature.]

["Cogenerator" means a person or business entity which owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes; and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978", Pub.L. 95-617.]

["Corresponding therms of gas" or "corresponding kilowatthours of electricity" means all therms of gas or kilowatthours of electricity from the taxpayer's business over, on, in, through or from the whole of its lines or mains, excluding therefrom, however:

1. Any therms of gas or kilowatthours of electricity as may have been sold and furnished to another public utility which is also subject to either the payment of a tax based upon gross receipts or the payment of a unit-based tax applied to therms of gas or kilowatthours of electricity;

2. Any kilowatthours of cogenerated electrical energy resold by the taxpayer to a producing cogenerator where produced; and

3. Any therms of natural gas sold by the taxpayer to a cogenerator and separately metered for use in a cogeneration facility.]

"Gross receipts" means all receipts from the taxpayer's business over, on, in, through or from the whole of its lines or mains, excluding only the following:

1. Any sum or sums of money received by [any] the taxpayer in payment for water [the portion of its products as may have been] sold and furnished to another public utility which is also subject to the payment of a tax based upon gross receipts, or to a gas, electric or gas and electric public utility subject to the payment of taxes pursuant to P.L.1997, c. 162;

[2. Receipts from the sale of waste heat produced as a by-product;]

[3.] 2. Receipts derived from interstate commerce;

[4.] 3. Any sum or sums of money received by the taxpayer [from a cogenerator in payment for cogenerated electrical energy resold by the taxpayer to the producing cogenerator where produced or any sum or sums of money received by the taxpayer from a cogenerator in payment for natural gas sold by the taxpayer to the cogenerator and separately metered for use at the cogeneration facility] in payment for water sold or furnished that is used to generate electricity that is sold for resale or to an end user other than the one on-site end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the

property purchased or leased from the one on-site end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity.

[5.] 4. In the case of a sewerage corporation an amount equal to any sum or sums of money payable by such sewerage corporation to any board, commission, department, branch, agency or authority of the State or of any county or municipality, for the treatment, purification or disposal of sewerage or other wastes.

[6.] 5. In the case of a water purveyor, the amount equal to any sum or sums of money paid in accordance with the water tax imposed by section 11 of P.L. 1983, c.443 (N.J.S.A. 58:12A-21) and which is included in the tariff altered pursuant to section 6 of P.L. 1983, c.443 (N.J.S.A. 58:12A-17).

* * *

"Real estate" means lands and buildings of taxpayers, but does not include [railways, tracks, ties, lines, wires, cables, poles,] pipes, conduits, bridges, viaducts, dams and reservoirs (except that the lands upon which dams and reservoirs are situated are real estate), machinery, apparatus and equipment, notwithstanding any attachment to lands or buildings.

["Scheduled Property" means only those classes or types of property of a taxpayer set forth in N.J.A.C. 18:22-5.6 (Unit value of scheduled property) of these regulations and which are to be used in computing the apportionment valuation.]

"Service connections"[:

1. In the case of telephone, telegraph or other wire communication facilities, means the wires connecting the instrument or instruments in the building or at the place where the service supplied by the taxpayer is used or delivered or is made available for use or delivery with a pole line, conduit line or cable line in the street, highway, road or other public place, or with a pole line, conduit line or cable line on private property; and

2. In the case of facilities of taxpayers subject to the Act, other than service connections as defined in paragraph 1 of this subsection,] means the [wires or] pipes connecting the building or place where the service or commodity supplied by the taxpayer is used or delivered, or is made available for use or delivery, with a supply line or supply main.

18:22-1.5 Accounting Methods

Every taxpayer subject to the provisions of this chapter is required to report gross receipts based on the method of accounting employed for Federal income tax purposes.

SUBCHAPTER 7. SEWERAGE AND WATER CORPORATIONS

18:22-7.2 Purpose of Act

(a) The purpose of the Act is to:

1.– 2. (No change.)

3. Provide for the taxation of the property of such corporations not so exempted from taxation;

4. Provide for the reimbursement to the State of certain costs and expenses incurred in the imposition and apportionment of the taxes[;].

[5. Supersede R.S. 54:31-1 to 31-7 (N.J.S.A. 54:31-1 to 7) and P.L. 1938, c.8 (N.J.S.A. 54:31-29 to 44).]

18:22-7.3 [Tax in lieu of all other taxation] Taxation of property, franchises, stock or gross receipts

(a) – (b) (No change.)

SUBCHAPTER 8. RETURNS REQUIRED FROM SEWERAGE AND WATER
CORPORATIONS

18:22-8.1 Information required on returns; due dates

(a) Every taxpayer shall, on or before September 1 of each year, return to the Director a statement showing, as of July 1 of such year:

1. The length of the taxpayer's lines and mains along, in, on, or over any public street, highway, road or other public place in this State, exclusive of service connections, stated separately for each class of business; and

2. The whole length of the taxpayer's lines and mains in this State, exclusive of service connections, stated separately for each class of business.

[(a)] (b) Every taxpayer shall, on or before February 1 of the tax year, return to the Director a statement showing:

1. (No change.)

2. The gross receipts for the preceding calendar year (pre-tax year) from the business over, on, in, through or from the whole of the taxpayer's lines and mains, stated separately for each class of business.

[(b)] (c) The information required in (a) and (b) above must be submitted on the forms available from the New Jersey Division of Taxation, [Audit Services Branch] Public Utility Tax Section, PO Box 246, Trenton, NJ [08646-0246] 08695-0246.

18:22-8.5 Additional statements regarding property acquired from other taxpayers

When any corporation subject to taxation under the Act acquires the rights, property and franchises of using and occupying public streets, highways, roads or other public places in this State [(other than the right and franchise to operate autobuses or vehicles of the character described in N.J.S.A. 48:15-41 et seq.)] of persons, copartnerships, associations or corporations then subject to an excise tax based upon its gross receipts; and retains these rights, property and franchises at the end of the calendar year in which the acquisition occurs; then, on or before February 1 of the succeeding year, the acquiring corporation must file a statement with the Director. The statement is in addition to the returns filed pursuant to Section 8.1 (Information required on returns) of this chapter and must include:

1. The gross receipts from the business over, on, in, through or from the lines or mains of the persons, copartnerships, associations or corporations whose rights, property and franchises were acquired [pursuant to conditions set forth in] as aforesaid, from January 1 of the year in which the property was acquired to the date of the acquisition; and

2. A statement showing the [scheduled property and] length of lines or mains as of July 1 of the year in which the acquisition took place; and

3. The total of the gross receipts as shown in both of said statements to the Director, or as otherwise ascertained by him. This total will be used in ascertaining[, and fixing [and apportioning] the excise tax imposed by the Act upon the acquiring corporation. If the rights, property and franchises were acquired from a corporation subject to taxation under the Act, then the total of the gross receipts as shown in both of said statements to the Director, or as otherwise ascertained by him, will be used in ascertaining[, and fixing [and apportioning] the excise tax imposed by the Act upon such acquiring corporation.

SUBCHAPTER 9. TAX PAYABLE TO THE STATE BY SEWERAGE AND WATER
CORPORATIONS

18:22-9.2 Excise tax payable; rates

(a) (No change.)

(b) Additional excise tax payable in tax year considered as a partial payment of the excise tax due the following year:

1. An additional amount equal to one-half of the excise tax payable May 1 of each year under (a) above shall be due on the same date;

i. This payment shall be in addition to the tax payable under (a) above and shall be considered as a partial payment of the tax which will be due, under (a) above, the following May 1;

ii. In the calculation of the tax due under (a) above in each year, every subject taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection as a partial payment in the preceding calendar year, and the taxpayer shall be entitled to the return, or credit against taxes due and payable in the next year, of any amount so paid that exceeds the total amount payable under (a) above.

18:22-9.3 Computation of tax payable to the State

On or before April 1 of each [T]tax [Y]year, the Director computes the excise taxes payable to the State as provided in Section 9.2 (Excise tax payable [to State]; rates) of this chapter and certifies, within five days thereof, to each taxpayer the amount of taxes payable to the State.

18:22-9.4 Deductions from or addition to tax

The Director, in computing the excise taxes due the State from any taxpayer for any year, shall deduct from or add to the amounts determined for the year the amount of any deduction or addition, to the extent and in the manner, which may be ordered or decreed by any judgment of the [Division of Tax Appeals] Tax Court or any court of the State by reason of any error or omission in computing any prior year's taxes.

18:22-9.6 Payment due; date

The taxes due under [the Act prior to 1993] Section 9.2 of this chapter are payable on or before May 1 of the tax year.

18:22-9.7 Payment due; to whom mailed

Payments due are to be made payable to "[The] State of New Jersey-Public Utility Tax" and[,] sent [or otherwise transmitted] to the [Utility Branch,] New Jersey Division of Revenue, Public Utility Tax, PO Box 247, Trenton, NJ 08646-0247.

Taxpayers that had a prior year tax liability of \$20,000.00 or more must remit their Public Utility Tax (Franchise and Gross Receipts Tax) payments by using Electronic Funds Transfer (EFT), as provided under N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3. To enroll for EFT, contact the New Jersey Division of Revenue at (609) 984-9830 or write: New Jersey Division of Revenue, EFT Unit, PO Box 191, Trenton, NJ 08646-0191.

18:22-9.8 Administration, collection and enforcement of tax

The administration, collection and enforcement of the tax payable to the State (Section 9.2 (Excise tax payable) of this chapter) is subject to the provisions of the State [Tax] Uniform Tax Procedure Law (N.J.S.A. 54:48 to 54:52 et seq.) to the extent that the provisions of that law are not inconsistent with any provision of the Act.

SUBCHAPTER 10. TAXES PAYABLE BY SEWERAGE AND WATER CORPORATIONS

18:22-10.1 Computation of tax

(a) (No change.)

(b) Advance payment in tax year considered as a partial payment of the tax due and payable in the following year:

1. An advance payment equal in amount to 55% of the increase in taxes due under (a) above during the preceding calendar year over the taxes due under (a) above in the calendar year immediately preceding that year, shall be paid each year by each subject taxpayer in the manner set forth in N.J.A.C. 18:22-12.1. The advance payment shall not be considered for the purpose of determining the amount of the increase.

i. This payment shall be in addition to the tax payable under (a) above and shall be considered as a partial payment of the tax to become due and payable in the following year;

ii. In the calculation of the tax due under (a) above in each year, every subject taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection as a partial payment in the preceding year and shall be entitled to the return of any amount so paid that exceeds the total amount payable in accordance with P.L.1940, c. 5 and the Act.

SUBCHAPTER 12. PAYMENT AND COLLECTION OF TAXES PAYABLE BY
SEWERAGE AND WATER CORPORATIONS

18:22-12.2 Penalties and interest; collection procedures

[(a) Any delinquent taxes will be collected in the same manner and subject to the same discounts, interest and penalties as other taxes.

(b) The same proceedings now available for the collection of personal taxes against other corporations or individuals are applicable to the collection of the excise taxes imposed under the Act and payable to any municipality.]

The administration, collection and enforcement of the taxes payable to the State under Section 10.1 of this chapter are subject to the provisions of the State Uniform Tax Procedure Law (N.J.S.A. 54:48-1 et seq.), to the extent that the provisions of that law are not inconsistent with the provisions of P.L.1940, c. 5 (N.J.S.A.54:30A-49 et seq.).